

PORTSF  
11.3.31.5.1

Childs, John

From: Childs, John  
Sent: Wednesday, September 26, 2001 2:47 PM  
To: Quinn, Padraic (Pad); Rennis, Denise; Ashton, David  
Subject: beneficial use of dredged material

Good news—Pad and I talked with Ed Druback at DEQ today and asked about using rehandle material at T5 mitigation site—Ed thought it was within the agreement and suggested to 1—write email to him; 2—he would take it to Sally Puente (new manager) with recommendation to approve; and 3—he or Sally would send an email back.

below is draft email—I would like to send out tomorrow by 1000 am—please review and get me your comments

Ed:  
As you suggested in our phone conversation today, I am writing this email to request your agreement with our interpretation of your September 4, 2001 letter that addressees the dredged material currently located in Port's rehandle facility.

While the Port is prepared to follow through with placing the dredged material at Berth 602, as described in the Port's letter dated May 25, 2001, we have identified a beneficial use more conducive to the environment. That is, we would like to use the dredged material for a wetland mitigation site (T5 wetland mitigation site). The dredged material is ideal in physical and chemical make-up and, in addition, the dredged material carries valuable native seeds.

In the letter, the dredged material is identified as "equivalent to 'soil, rock, concrete or other similar non-decomposable material.'" The letter also states that the dewatered dredged material is "substantially the same as 'clean fill' or 'inert' material, as defined in OAR 340-093-0030 (13) and (46), respectively."

It is the Port's interpretation that because this material has been described by the above terms, this material will be acceptable for the T5 Wetland Mitigation Site.

Please provide your agreement with this interpretation, or a clarification. Because we will be required to start moving the material out of the Rehandle Facility by mid October, we would appreciate your interpretation by October 10.

Thank you for your continued support on this issue; we appreciate your time and dedication to finding solutions.

USEPA SF



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DAVID :

PLEASE REVIEW DURING COSETO.

THANKS

Legal Analysis

- ① under law contaminant constituents ~~is~~ ~~contained~~ in sediments = solid waste
- ② under DEQ policy and practice to put material in wetlands or in contact + groundwater we have to demo the material meets human and ecological criteria
- ③ current determination is based on human health criteria only and is not a reasoned decision

OVER

④ thus to comply with the law we would have to make some demonstration of compliance with eco. criteria too.

⑤ if however the business operator decides to take the risk re ④ above, then at least you can lower the risk of liability to DEP by setting up a government equitable estoppel defense.

⑥ Estoppel would require:

① detailed articulation of where to be placed - i.e. in groundwater and in wetlands.

Refer to Original Submission ② reference to where science we are relying on is located - i.e. original submission better

③ deletion of references to "this is Port's interpretation"

④ letter back <sup>from DEP program manager</sup> affirming the <sup>content</sup> of the submission you are about to make